



August 10, 2017

The Honorable Ajit Pai, Chairman
The Honorable Mignon Clyburn, Commissioner
The Honorable Michael O'Rielly, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Restoring Internet Freedom*, WC Docket No. 17-108

Dear Chairman Pai, Commissioner Clyburn and Commissioner O'Rielly:

The National Hispanic Media Coalition ("NHMC") respectfully requests an update from the Federal Communications Commission ("FCC" or "Commission") on the status of its Freedom of Information Act ("FOIA") request FCC 2017-565 submitted on May 1, 2017.

On July 17, 2017 the Commission issued an Order¹ denying NHMC's Motion for Extension of Time² in the above-referenced proceeding. The Commission noted in the Order that it offered "to provide NHMC an additional 2,000 complaints, the accompanying carrier responses, and 1,500 [ombudsperson] emails, and an Excel spreadsheet of all 47,000 complaint numbers and additional requested data fields"³ by September 1, 2017. In separate email communications, the Commission made clear that NHMC had to accept this offer by July 28th and that the documents would be provided on a rolling basis.⁴ On July 27th, NHMC sent a letter to the Commission accepting specific parts of the offer.⁵ To date and after repeated inquiries, NHMC has not received a response to its July 27th letter or heard anything further from the Commission regarding its FOIA request.

The information requested by NHMC is critical to the Net Neutrality proceeding and must be released for the public to have adequate time to review before the comment deadline expires.

¹ See *Restoring Internet Freedom*, WC Docket 17-108, Order, DA 17-686A1 (WCB 2017) (*Order Denying Extension*).

² Motion for Extension of Time, WC Docket No. 17-108 (filed July 7, 2017).

³ *Order Denying Extension* at para. 4.

⁴ See Attachment A.

⁵ See Attachment B.

We appreciate your time and look forward to your response.

Sincerely,

Marianna Elvira
Law Student
Florida State University College of Law

_____/s/_____
Carmen Scurato, Esq.
Francella Ochillo, Esq.
Maria "Gloria" Tristani, Esq.
National Hispanic Media Coalition
65 South Grand Avenue, Suite 200
Pasadena, CA 91105
(626) 792-6462

Attachment A

July 14, 2017 – July 18, 2017

Emails between Mike Hennigan (FCC) and Carmen Scurato (NHMC)

From: Mike Hennigan Mike.Hennigan@fcc.gov
Subject: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: July 14, 2017 at 4:35 PM
To: Carmen Scurato cscurato@nhmc.org
Cc: Nancy Stevenson Nancy.Stevenson@fcc.gov, Ryan Yates Ryan.Yates@fcc.gov

Hello Ms. Scurato, this is a follow-up to our telephone conversation on July 5, 2017, regarding your requests for complaints and carrier responses related to the "2015 Open Internet Order." As you are aware, our search located approximately 47,000 documents which included various keyword searches (i.e., speed, billing, blocking, throttling, etc.) and approximately 18,000 carrier responses.

As previously discussed, your request would have the Commission provide you with over 65,000 documents (47,000 complaints plus 18,000 carrier responses). This would require a vast amount of resources for CGB to process, as each document would need to be individually reviewed to redact any personally identifiable information contained therein. CGB staff initially estimate that processing such a request would require over 2,000 staff hours. Also, extracting all these records would tremendously impact the operation of the Zendesk database, and the ability of Zendesk to process incoming complaints and any subsequent responses from CGB would be hindered. For these reasons, your FOIA request for all complaints and carrier responses related to the Open Internet Order would place an unreasonable burden upon the agency.

Therefore, in an attempt to narrow the scope of your requests, we are offering you an additional 2,000 sample complaints related to your requests, along with the carrier responses (approximately 900 pages), approximately 1,500 emails, and Excel spreadsheets with all approximately 47,000 complaint numbers and the additional data fields you requested. If you agree to this offer, we anticipate we can provide the additional documents to you by September 1, 2017.

Please respond to this offer by close of business on July 28, 2017, advising us of your willingness to narrow the scope of your requests as outlined above. If we do not hear back from you by the due date, we will assume that you decline the Commission's offer to narrow the request.

Sincerely,

Mike Hennigan
Consumer Policy Division
Consumer & Governmental Affairs Bureau
202-418-2869

From: Carmen Scurato cscurato@nhmc.org
Subject: Re: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: July 15, 2017 at 7:15 AM
To: Mike Hennigan Mike.Hennigan@fcc.gov
Cc: Nancy.Stevenson@fcc.gov, Ryan.Yates@fcc.gov, Stephanie.Kost@fcc.gov, Vanessa Lamb Vanessa.Lamb@fcc.gov,
Gloria Tristani gtristani@nhmc.org

Mr. Hennigan,

Thank you for your detailed response. I will consider your offer and provide a response by the deadline requested.

I do however, have a few follow-up questions which I hope you can respond to before the July 28th deadline. Some of these questions I had already raised in an email this past Monday (July 10th) to Ms. Kost.

(1) I asked whether the 2,000 additional sample complaints could be limited to those complaints that triggered a carrier response. I see from your email below that you state 900 pages of carrier responses for the 2,000 complaints, but not the number of carrier responses that represents. Would providing 2,000 complaints with 2,000 carrier responses be something you could take under consideration as we work to narrow the request?

(2) For the additional 2,000 complaints, will the production also include any attachments uploaded by the consumers?

(3) I am still waiting on the 308 carrier responses from the first 1,000 samples you provided and any attachments associated with those complaints. What is the production deadline for those documents?

(4) You mention 1,500 emails, and I want to be clear - is this in reference to the ombudsperson documents? Or are there other emails that are being produced in response to my FOIA requests? Additionally, if it is the ombudsperson documents, can you confirm that the 1,500 emails is the total you received from both Michael Janson and Parul Desai?

(5) The email from Ms. Kost on July 7th, states that a spreadsheet with 47,000+ consumers complaint data could be produced by July 19th. Are we still on track to get this spreadsheet in that time-frame, or does your email below suggest that the new time-frame is September 1st?

(6) This is something I raised with Ms. Kost in the July 10th, email - but to clarify when you say "by September 1, 2017" are we using that as the completion date? If so, are we still moving forward with a rolling production as you suggested in earlier calls? If it is a rolling production, could you provide further details regarding the production schedule? If not a rolling production, could you please confirm that all the data, documents, emails, and spreadsheet all will be produced on September 1st?

Finally, I again want to make it clear that these documents requested are pertinent to an open rule making proceeding at the Commission (WC Docket No. 17-108), with the comment deadline set to this coming Monday, July 17th, and reply comments due August 16th, a couple of weeks before the September 1st timeline you have provided in your email below.

Thank you for taking these follow-up questions into consideration. I look forward to your response.

Best,
Carmen

Carmen Scurato / Director, Policy & Legal Affairs
cscurato@nhmc.org / (202) 596-8997 / Washington, DC



National Hispanic
Media Coalition



From: Mike Hennigan Mike.Hennigan@fcc.gov
Subject: RE: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: July 18, 2017 at 4:01 PM
To: Carmen Scurato cscurato@nhmc.org
Cc: Nancy Stevenson Nancy.Stevenson@fcc.gov, Ryan Yates Ryan.Yates@fcc.gov, Stephanie Kost Stephanie.Kost@fcc.gov, Vanessa Lamb Vanessa.Lamb@fcc.gov, Gloria Tristani gtristani@nhmc.org

Ms. Scurato, this email is in further response to your July 15, 2017, email regarding your request for Open Internet Complaints.


1. The 2,000 additional sample complaints would include the carrier responses for the complaints that have been served on a carrier. However, certain "issues" you have asked us to search such as; (e.g. "interference issues") would produce no carrier responses because those complaints are typically not served on a carrier.
2. The additional 2,000 sample complaints would include the complaints and any attachments thereto.
3. The 308 carrier responses from the first 1,000 samples would be provided to you by September 1, 2017, once you have agreed to our offer.
4. The approximately 1,500 emails are from the ombudsperson(s) Michael Janson and Parul Desai. Included in those 1,500 e-mails are also approximately three other emails related to your request that were provided to me by persons other than the ombudsperson(s).
5. The spreadsheet for the 47,000 plus complaints data would be provided to you by September 1, 2017.
6. Yes, we are using the September 1, 2017, as the completion date. Yes, we will continue to provide you with documents on a rolling basis once you have agreed to our offer. There is no set schedule when providing the documents on a rolling production other than providing you the documents in the most efficient and timely manner possible.

Sincerely,

Mike Hennigan
Consumer Policy Division
Consumer & Governmental Affairs Bureau
202-418-2869

Attachment B

July 27, 2017 NHMC Response to FCC FOIA Offer
and
August 4, 2017 NHMC Follow-up Email to FCC

From: Carmen Scurato cscurato@nhmc.org 
Subject: Re: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: July 27, 2017 at 4:35 PM
To: Mike Hennigan Mike.Hennigan@fcc.gov
Cc: Nancy Stevenson Nancy.Stevenson@fcc.gov, Ryan Yates Ryan.Yates@fcc.gov, Stephanie Kost Stephanie.Kost@fcc.gov, Vanessa Lamb Vanessa.Lamb@fcc.gov, Gloria Tristani gtristani@nhmc.org

Mr. Hennigan,

Attached please find NHMC's response to the offer below. We look forward to your prompt response in writing.

Best,
Carmen



NHMC
Respo...-17.pdf



Submitted via Email
Mike.Hennigan@fcc.gov
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

July 27, 2017

RESPONSE TO OFFER RE: NHMC FOIA REQUEST FCC 2017-565

Dear Mr. Hennigan,

Please consider this NHMC's response to your email from July 14, 2017, and the follow-up email from July 18, 2017. After careful consideration, we are willing to accept your offer as it relates to the 1,500 ombudsperson documents, but cannot accept the offer to provide only 2,000 of the more than 47,000 consumer complaints that are responsive to our request, because we still have several concerns about narrowing the request as it relates to the current Internet rulemaking proceeding, WC Docket No. 17-108 ("*Internet NPRM*").

First, we accept the offer for the ombudsperson documents because these documents are responsive to part 3 of NHMC's Freedom of Information Act request FCC-2017-565 submitted on May 1, 2017. However, your offer states that we will receive all 1,500 emails from ombudsperson(s) Parul Desai and Michael Janson by September 1, 2017. This date is five months after the date of our FOIA request, and it remains unclear what has caused such an unnecessary delay in production. Further, these documents are directly responsive to a question raised in the Commission's pending *Internet NPRM* proceeding, and your production deadline of September 1, 2017, is two weeks after the *Internet NPRM*'s reply comment deadline of August 16, 2017. We therefore ask that you provide documents to NHMC on a rolling basis throughout the month of August, with the final set of documents provided to NHMC no later than September 1, 2017.

Second, we cannot accept your offer to provide only an additional 2,000 consumer complaints, with 900 pages of carrier responses. There is a need for the Commission to release, and for the public to be able to review, all of the more than 47,000 open Internet complaints in order to protect the integrity of the record in the pending *Internet NPRM* proceeding. When NHMC submitted its FOIA requests last May, it was unaware of the Commission's failure to review its own open Internet complaint-related documents, a failure that is clearly apparent now. Therefore, we request that the Commission work to release the text of the more than 47,000 open Internet-related complaints and the data related to those complaints, not only to NHMC, but also, in the interests of transparency and a complete record in the *Internet NPRM* proceeding, to the

remainder of the public. Simply put, it should not take a FOIA request for the Commission to release to the public for review and comment Commission records that directly relate to issues the Commission itself has chosen to raise in the pending *Internet NPRM* proceeding. This situation is only further exacerbated by the facts that the Commission holds this information in its exclusive possession, failed even to acknowledge its existence in the *Internet NPRM*, and has apparently yet to conduct any analysis of these documents.

Third, we would accept the spreadsheet with data for the more than 47,000 consumer complaints, as this would capture the entire universe of complaints. Given Stephanie Kost's original proposed production date of July 19, 2017 for this material, we should be confident in assuming that this data will be produced to NHMC well before the September 1, 2017 production deadline. Please let me know if my confidence is misplaced.


Fourth, we still request that you produce the 308 carrier responses that relate to the initial production of 1,000 consumer complaints. We also want to emphasize that several of these complaints reference attachments uploaded by consumers, and we request that those attachments be produced as well.

Finally, by accepting the documents as described and on the time schedule set forth above, NHMC does not waive any of its rights to appeal this FOIA production or its rights to request further responsive documents from the Commission. We remain deeply concerned that the Commission has failed to adequately address the more than 47,000 open Internet-related complaints and their impact on the issues raised and the accuracy of some of the tentative conclusions reached in the *Internet NPRM*. We are likewise troubled that the Commission continues to move forward with a proceeding to repeal open Internet rules established in 2015 without analyzing, or allowing the public to analyze, information that is critical to assessing the benefits of, and the need to preserve those rules.

We look forward to your prompt response in writing.

Respectfully,

Carmen Scurato, Esq.
Director, Policy & Legal Affairs
National Hispanic Media Coalition
718 7th Street NW
Washington, DC 20001
(202) 596-8997
cscurato@nhmc.org

From: Carmen Scurato cscurato@nhmc.org 
Subject: Re: FOIAs 2017-565, 577, 638, & 639 (Open Internet Complaints)
Date: August 4, 2017 at 10:23 AM
To: Mike Hennigan Mike.Hennigan@fcc.gov
Cc: Nancy Stevenson Nancy.Stevenson@fcc.gov, Ryan Yates Ryan.Yates@fcc.gov, Stephanie Kost Stephanie.Kost@fcc.gov,
Vanessa Lamb Vanessa.Lamb@fcc.gov, Gloria Tristani gtristani@nhmc.org

Mr. Hennigan,

Last Thursday, July 27th, I attached a letter responding to your emails regarding the next phase of NHMC's FOIA requests. We would like to know when we can expect a response, as well as a confirmation that we will be receiving documents on or before September 1, 2017.

I have attached the letter again for your convenience.

Sincerely,
Carmen



NHMC
Respo...-17.pdf

Carmen Scurato / Director, Policy & Legal Affairs
cscurato@nhmc.org / (202) 596-8997 / Washington, DC

